IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

Camp Douglas Rescue, Inc.,

Plaintiff,

v.

Joni Klinge-West,

Defendant.

Civil Action No.: 17-CV-358

PLAINTIFF'S MEMORANDUM IN RESPONSE TO COURT'S ORDER DATED MAY 16, 2017

Plaintiff Camp Douglas Rescue, Inc. ("Camp Douglas") respectfully submits this memorandum of law in response to the Court's May 16, 2017 Order (the "Order"), which requested that Camp Douglas "file a brief explaining why this court has subject matter jurisdiction over this action." (Order at p. 2.)[1] Camp Douglas acknowledges that the procedural posture of this matter is perhaps atypical, given that Camp Douglas and Defendant Joni Klinge-West ("Klinge-West") (collectively with Camp Douglas, the "Parties") negotiated the terms of a proposed settlement agreement (the "Agreement") prior to bringing this action. (*See* Settlement Agreement.)[2] In its Complaint for Declaratory Judgment, Camp Douglas seeks the Court's determination "that the settlement agreement between [the Parties] constitutes a 'fair and reasonable resolution of a bona fide dispute' under the FLSA." (*See* Compl. at ¶ 35.)[3] Absent this determination, the Parties' settlement will have no force and effect; Klinge-West's release will be absolutely void as a matter of law; and Camp Douglas will have no obligation to pay Klinge-West under the terms of the Agreement. (*See* Settlement Agreement.)

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[1] Previously filed by the Court on May 16, 2017 as Dkt. # 4.
[2] Previously filed with the Court on May 12, 2017 as Dkt # 2-3.
[3] Previously filed with the Court on May 12, 2017 as Dkt. # 2.

CAMP DOUGLAS HAS STANDING TO PURSUE THIS COMPLAINT FOR DECLARATORY JUDGMENT

Simply because the Parties negotiated the terms of a settlement before initiating litigation does not strip the Court of its authority to supervise the settlement of claims arising under the FLSA. The doctrine of standing "requires that the plaintiff establish an 'injury in fact' caused by the defendant and redressable by the court." *J.P. Morgan Chase Bank, N.A. v. McDonald*, 760 F.3d 646, 650 (7th Cir. 2014) (quoting *Sprint Comm's Co. v. APCC Servs., Inc.*, 554 U.S. 269, 27-74 (2008)). "This showing is not meant to be a difficult one, particularly at the pleading stage, but the injury in fact must be particular to the plaintiff and either 'actual or imminent.'" *Id. (*quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)); *see also Milwaukee Police Ass'n v. Board of Fire & Police Comm'rs of City of Milwaukee*, 708 F.3d 921, 926 (7th Cir. 2013) (citations omitted) (summarizing the requirements for Article III standing).

I. WELL-ESTABLISHED FEDERAL JURISPRUDENCE MANDATES COURT SUPERVISION OF SETTLEMENTS UNDER THE FAIR LABOR STANDARDS ACT.

Camp Douglas has standing to bring this Complaint for Declaratory Relief, and stands to suffer an imminent injury-in-fact in the absence of the Court's review and approval of the Parties' settlement. As was alleged in Camp Douglas's Complaint—and as the Court acknowledged in its Order—well-settled federal jurisprudence renders private settlements of FLSA claims unenforceable. *See, e.g., Walton v. United Consumer's Club, Inc.*, 786 F.2d 303, 307 (7th Cir. 1986); *Lynn's Food Stores v. U.S.*, 679 F.2d 1350, 1353

(11th Cir. 1982). As the Court noted in its Order, decisions addressing the prohibition against private settlements of FLSA claims typically arise in the context of class action litigation. *See, e.g., id.* That being said, many courts have applied the same rule outside the class-action context. For example, in *Brooklyn Savings Bank v. O'Neil*—a case on which *Lynn's Food Stores* relied in reaching its holding[4]—the United States Supreme Court held that an individual employee's purported "release and waiver" of her FLSA claims was "a fortiori invalid" and "absolutely void." 324 U.S. 697, 713-714 (1945). Other courts, in the context of claims involving individual employees, have arrived at the same conclusion. *See, e.g., Silva v. Miller*, 307 Fed. Appx. 349, 351 (11th Cir. 2009) (holding that "[t]he district court had a duty to review the compromise of [an individual employee's] FLSA claim"); *Hohnke v. U.S.*, 69 Fed. Cl. 170, 178-180 (Fed. Cl. 2005) (invalidating a settlement reached between U.S. Government and individual federal employee because the agreement was not supervised by either the district court or U.S. Department of Labor); *Archer v. TNT USA, Inc.*, 12 F.Supp.3d 373, 387 (E.D.N.Y. 2014) (holding that a private settlement between employer and individual employee, reached in the context of a private lawsuit in which the employees were represented by counsel, was void absent judicial supervision of same); *Dees v. Hydradry, Inc.*, 706 F.Supp.2d 1227, 1246 (M.D. Fla. 2010) (holding, with respect to an individual employee-plaintiff, that "Congress prohibits a private agreement

[4] *See* 679 F.2d at 1352 ("Recognizing that there are often great inequalities in bargaining power between employers and employees, Congress made the FLSA's provisions mandatory; thus, the provisions are not subject to negotiation or bargaining between employers and employees") (citing *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 706-708 (1945)).

altering FLSA rights. An employee entitled to FLSA wages may compromise his claim only under the supervision of either the Department of Labor or the district court"); *but see Bodle v. TXL Mortg. Corp.*, 788 F.3d 159, 162-165 (5th Cir. 2015) (discussing a limited exception to the prohibition against private settlement of FLSA claims, recognized only in the Fifth Circuit, which does not otherwise apply to the facts of this case).

II. CAMP DOUGLAS HAS STANDING TO BRING THE COMPLAINT FOR DECLARATORY JUDGMENT BECAUSE NO ENFORCEABLE RELEASE EXISTS IN THE ABSENCE OF COURT APPROVAL OF THE PARTIES' SETTLEMENT.

Standing exists when a litigant stands to suffer an imminent injury-in-fact, caused by the defendant, and redressable by the Court. *McDonald*, 760 F.3d at 650. In this case, an actual controversy existed—and continues to exist—between Camp Douglas and Klinge-West regarding Camp Douglas's responsibility to compensate Klinge-West for overtime under the Fair Labor Standards Act. (*See* Compl. ¶ 14.) Camp Douglas denied her allegations. (Compl. ¶ 15.) Nevertheless, the Parties negotiated the terms of a prospective settlement, with the understanding that Court approval of the settlement would be required to finally resolve the Parties' controversy. (*See* Compl. ¶¶ 33-35.) Understanding that the release provision of the Agreement was unenforceable in the absence of Court approval, the Parties expressly acknowledged that the entire Agreement was "contingent upon the Court's approval of the Settlement. If the Court refuses to grant Final Approval, this Settlement Agreement may be voided at either party's option, in which case this Settlement Agreement will become void . . . ." (Settlement Agreement at p. 5.)

Until the Court reviews and approves the Parties' settlement, Klinge-West's release of her FLSA claims remains "a fortiori invalid" and "absolutely void." *Brooklyn Sav. Bank*, 324 U.S. at 713-714. Therefore, Klinge-West remains free to initiate a federal lawsuit against Camp Douglas seeking damages arising out of an alleged violation of the FLSA and Camp Douglas remains subject to the threat of litigation arising out of this controversy.

III. *MILWAUKEE POLICE ASSOCIATION* IS DISTINGUISHABLE ON ITS FACTS.

Although both *Milwaukee Police Association* and the present matter both involve purported settlements, the two cases are factually distinguishable because the release at issue before this Court is not enforceable against Klinge-West until this Court determines the Parties' settlement is fair and reasonable. In *Milwaukee Police Association*, Melissa Ramskugler—a police cadet—initiated suit against the Board of Fire & Police Commissioners of Milwaukee (the "Board"). 708 F.3d at 924. The Milwaukee Police Association—the labor union representing Ms. Ramskugler—(the "Union") joined as a plaintiff in the litigation. *Id.* During the pendency of litigation, "Ramskugler signed a Settlement Agreement and General Release." *Id.* at 925. "This Agreement released all claims against the defendants and waived any right to a hearing or other process that Ramskugler may have had." *Id.*

As a result, the Seventh Circuit held that the Union did not have standing to pursue claims against the Board because its sole source of standing as an association was based upon the controversy between Ramskugler and the Board. *Id.* at 926-927. The Union argued that it had a "tangible interest in knowing the law as it may impact its members, as well as ensuring that its members are afforded due process." *Id.* at 927. On this basis, the Seventh Circuit found that "[t]his pleading leaves little doubt that the [Union]'s claim to standing derives entirely from the members," because "[t]here is no mention of any injury to the [Union] as an organization." *Id.* The Court concluded that "[s]uch failure to allege injury in a complaint is fatal to standing, notwithstanding new arguments made on appeal." *Id.*[5]

The relief that Camp Douglas seeks in this case is nothing like the relief sought by the Union in *Milwaukee Police Association*. Unlike the case before the Seventh Circuit, no party to the matter before this Court has executed a valid and enforceable release of claims. Klinge-West has not released her wage and hour claims, and cannot do so in the absence of this Court's independent determination that the Parties' settlement represents a fair and reasonable resolution to the parties' dispute. *See Hohnke*, 69 Fed. Cl. at 171-172.

IV. THE U.S. COURT OF FEDERAL CLAIMS DECISION IN *HOHNKE V. UNITED STATES* PAINTS A VIVID PICTURE OF THE IMMINENT INJURY-IN-FACT THAT CAMP DOUGLAS FACES.

The *Hohnke* decision paints a vivid picture of the imminent injury-in-fact that Camp Douglas faces in from Klinge-West; it is precisely what Camp Douglas seeks to avoid by invoking this Court's jurisdiction to review the Parties' settlement and declare it fair and reasonable. In *Hohnke*, the plaintiff "worked as a Police Services Canine Sargeant for the Department of Veterans Affairs Medical Center in Milwaukee, Wisconsin ("VAMC")." *Id.*

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[5] In addition, the Seventh Circuit also held that the controversy between the Board and the Union was moot given Ramskugler's settlement with the Board. *See Milwaukee Police Ass'n*, 708 F.3d at 929-930. Because the Union had no independent standing apart from the claims held by Ramskugler, once Ramskugler settled with the Board, the legal effect of the release flowed to the Union and prevented the Union from raising claims on her behalf. *Id. at* 930 ("Ramskugler no longer fulfills that role for the MPA. If she were to file suit today, she would lack standing because she does not have a redressable claim—her Settlement Agreement waived any sort of relief this court could grant her. Without establishing standing in her own right, Ramskugler cannot be used by the MPA to satisfy the first requirement of associational standing.")

at 171. As part of her job duties, plaintiff "handled and cared for a police canine named Ury." *Id.* Plaintiff's claims against VAMC arose out of her claim that it failed "to pay her for overtime wages for time she allegedly spent carrying for Ury outside of regular working hours." *Id.*

Plaintiff never initiated a lawsuit against VAMC, or initiated an agency action seeking to recover the allegedly unpaid overtime wages. *See id.* Nevertheless, attorneys representing plaintiff and VAMC negotiated a settlement proposal, in which plaintiff "purported to waive overtime claims under the [Fair Labor Standards Act]." *Id.* at 172. After signing the settlement agreement, plaintiff "filed an FLSA overtime claim with the Office of Personnel Management ("OPM")." *Id.* at 172-173. Plaintiff subsequently filed an FLSA claim with the United States Court of Federal Claims on March 29, 2004. *Id.* at 173.

The court found "that the settlement agreement was not a valid accord and satisfaction of [plaintiff]'s potential overtime claims," and permitted the plaintiff to pursue her FLSA claims in federal court *despite* her prior execution of a settlement agreement that purported waive her FLSA claims. *Id.* at 173. In reaching its decision, the court analyzed the United States Supreme Court's decision in *Brooklyn Savings Bank* and held that "the law is clear that an employee cannot contract away her rights under the FLSA, regardless of her level of knowledge." *Id.* at 176. "That [plaintiff] had an attorney to advise her of her rights does not convert this purported waiver into a valid settlement of a bona fide dispute of overtime compensation." *Id.* at 177. Furthermore, the *Hohnke* court agreed with the Eleventh Circuit's decision in *Lynn's Food Stores*, noting that "private employees could not waive their FLSA rights, even in settlement of a bona fide dispute," unless the settlement is supervised by the Department of Labor or supervised by the Court. *Id.* at 179. Given this assessment, the *Hohnke* court held that plaintiff "did not legally waive her right to overtime compensation under the Fair Labor Standards Act," and did not "settle her overtime claims through an accord and satisfaction." *Id.* at 180. Plaintiff was permitted to pursue her claims against VAMC because the release did not operate to bind her in the absence of the Court's approval of the settlement. *See id.*

Camp Douglas's invocation of this Court's jurisdiction to review and approve the Parties' proposed resolution of their dispute is a direct response to the injury suffered by the United States in *Hohnke*. In the event that this Court found the Parties' settlement fair and reasonable under the facts of the case, Klinge-West's release would become legally binding upon her. Camp Douglas could then pay her according to the terms of the Parties' Agreement. Only then—after the Court exercised its authority to review the Parties' settlement and declare it fair and reasonable—would the Parties' actual controversy be finally laid to rest.

CONCLUSION

Camp Douglas has standing to bring this Complaint for Declaratory Judgment because federal law renders Klinge-West's release null and void pending this Court's declaration that the Parties' settlement is fair and reasonable. Until that time, Camp Douglas remains under imminent threat of litigation from Klinge-West *despite* the apparent resolution of her claims. This Court can provide Camp Douglas with redress from this imminent threat of litigation by reviewing the Parties' proposed settlement and declaring it fair and reasonable under the facts of the Parties' dispute. This Court should exercise its jurisdiction over this matter and fix the rights of the Parties to this dispute.

Dated: May 30, 2017

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